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ATTORNEYS FOR APPELLANT:

BENJAMEN W. MURPHY
ANDREW M. YODER
Murphy Yoder Law Firm, P.C.
Merrillville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DARRELL WASHINGTON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A04-0610-CR-588
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
Cause No. 45D09-0507-FD-225

June 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Darrell Washington (“Washington”) appeals his conviction for possession of cocaine, as a Class D felony,¹ and a traffic infraction for lack of a license plate light.² We affirm.

Issue

Washington raises one issue, which we restate as whether the trial court erred in admitting evidence found when Washington exited his car upon the request of police in order to secure Washington’s gun.

Facts and Procedural History

On the evening of November 10, 2004, Gary Police Detective Jason Angel (“Detective Angel”) observed a 1997 Pontiac Bonneville traveling southbound on Connecticut Street that did not appear to have a working light above the license plate. Detective Angel turned to follow the car, confirmed the lack of a license plate light, and activated the lights on his squad car to initiate a traffic stop.

Detective Angel noticed the car had two occupants and called dispatch for assistance. Upon approaching the driver’s side of the car, Detective Angel requested a driver’s license and car registration and informed the driver why he was pulled over. Washington, the driver, provided the requested documents. Then proceeding with his standard questions for a traffic stop, Detective Angel asked Washington if there were any weapons in the car. Washington

¹ Ind. Code § 35-48-4-6.

² Ind. Code § 9-19-6-4.

replied in the affirmative. Washington indicated it was in the center console and turned as if to retrieve it. Detective Angel requested Washington instead to keep his hands on the steering wheel. At some point in time, Washington produced a valid license to carry the gun.

Upon the arrival of the police back-up, Detective Angel asked Washington to exit the vehicle. Washington complied. As Washington opened the car door to step out, two small knotted clear plastic baggies containing an off-white rock-like substance located on the front of the rocker panel came into view.³ After a field test on the substance resulted in a positive indication for cocaine, Washington and the passenger were placed under arrest.

The State charged Washington with possession of cocaine, as a Class D felony, maintaining a common nuisance, a Class D felony,⁴ and a traffic infraction of not having a working license plate light. The State later moved to dismiss the charge for maintaining a common nuisance, and the motion was granted. After a jury trial on August 25, 2006, Washington was found guilty as charged. The trial court sentenced Washington to eighteen months in the Sheriff Work Release Program. Washington now appeals.

Discussion and Decision

On appeal, Washington contends the trial court erred in admitting the cocaine and testimony as to its discovery because it was obtained in violation of his federal and state constitutional rights prohibiting illegal searches and seizures. Specifically, he asserts that he

³ A rocker panel is the lowest panel along the side of a car between the wheel wells and forms the lower portion of the doorframes.

⁴ Ind. Code § 35-48-4-13(b).

was subjected to an unreasonable search when Detective Angel asked him to exit his car in order to retrieve Washington's gun. He does not challenge the initial traffic stop.

A trial court has broad discretion in ruling on the admissibility of evidence, and we will only reverse a trial court's ruling on admissibility of evidence when the trial court has abused its discretion. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). However, failure to object to the admission of evidence at trial results in waiver of the issue of admissibility on appeal. Kubsch v. State, 784 N.E.2d 905, 923 (Ind. 2003). Here, Washington concedes that he did not move to suppress this evidence prior to trial or object to its admission at trial.

In an attempt to evade waiver, Washington couches his argument in terms of fundamental error. However, our supreme court has held that the admission of evidence obtained in violation of the defendant's constitutional rights to be protected against unlawful searches and seizures does not elevate the issue to the status of fundamental error. Swinehart v. State, 268 Ind. 460, 376 N.E.2d 486, 491 (1978). Therefore, we will not review the admission of the challenged evidence for fundamental error.

Affirmed.

SHARPNACK, J., and MAY, J., concur.